

BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 3133,

Petitioner,

v.

CITY OF HARRISONVILLE,

Respondent.

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Public Case No. R 2002-011

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 2000. This matter arises from the election petition of International Association of Fire Fighters, Local 3133 (hereinafter referred to as the Union), to represent certain employees of the City of Harrisonville, (hereinafter referred to as the City). The Union seeks to represent a bargaining unit consisting of all full-time Fire Department employees at or below the rank of Captain and all full-time Emergency Medical Service (EMS) Department employees at or below the rank of Supervisor including any full-time Secretary, Billing Clerk, and Accounts Receivable Clerk, excluding all employees above the ranks of Captain and Supervisor. The City objected to inclusion of the Fire Captain and the EMS Shift Supervisors on the grounds that they were supervisors and confidential employees. The City also objected to inclusion of any full-time Secretary, Billing Clerk, and Accounts Receivable Clerk on the ground that they do not share a community of interest with the remaining full-time employees of the Fire Department and EMS Department.

A hearing on the matter was held on December 10, 2001 in Harrisonville, Missouri, at which representatives of the Union and the City were present. The case

was heard by State Board of Mediation Chairman John Birch, Employee Member LeRoy Kraemer, and Employer Member Robert Douglass. At the beginning of the hearing, the Union amended its petition to exclude from the proposed unit any full-time Secretary, Billing Clerk, and Accounts Receivable Clerk. Therefore, only the Fire Captain and three EMS Shift Supervisors remained in issue. During the hearing, the parties were given full opportunity to present evidence and make their arguments. Afterward, the parties filed briefs in support of their respective positions. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, Order and Direction of Election.

FINDINGS OF FACT

The City is a municipality within the State of Missouri. The City has nine elected officials, a Mayor and eight Aldermen. The Board of Aldermen sets policy for the City. The City also has a City Administrator. The City Administrator reports directly to the Mayor and the Board of Aldermen. The City Administrator implements and administers the policies adopted by the Board of Aldermen.

The City has several different departments including the Emergency Medical Services (EMS) Department and the Fire Department. The Department heads report to the City Administrator. The Department head for the EMS Department is the EMS Director. The Department Head for the Fire Department is the Fire Chief.

The City has a personnel manual setting forth the policies and procedures that must be followed in the administration of its personnel program. The Board of Aldermen adopted the current version of the personnel manual on November 15, 1999. The City Administrator is charged with administering the City's personnel policies. Department rules and regulations and Standard Operating Procedures (SOPS) manuals cannot conflict with the provisions of the personnel manual. Additionally, departmental rules

must be approved by the City Administrator and, when necessary or appropriate, adopted by the Board of Aldermen.

The City has a basic salary plan for all city employees. The plan consists of salary ranges, expressed in monthly or hourly rates, for each class of positions. The basic salary plan, as proposed by the City Administrator and adopted by the Board of Aldermen, constitutes the pay plan for the City. The City Administrator prepares the pay plan as part of the City's normal budget process.

Department heads, with the approval of the City Administrator, make appointments from among applicants based on ability, training, and experience. When a vacancy occurs, the Department in question proceeds with recruitment for the position. All employment applications are forwarded to the City Administrator's secretary and held by her until the advertised closing date. Then, all of the applications received are forwarded to the Department. The City Administrator does not review any employment applications. The Department head signs the appointment form to hire the individual for the vacancy. The appointment form is then forwarded to the City Administrator.

Generally, a person is hired at the minimum rate of pay for the class. To hire an individual at a rate above the minimum rate, the Department must submit a written request to the City Administrator and the City Administrator must approve the request. Department heads, with the approval of the City Administrator, may grant performance pay increases greater than one step or performance pay increases more often than once a year.

Newly hired employees and employees promoted to a new position must serve a probationary period. New public safety employees must serve a minimum probationary period of twelve months from the date of initial appointment. Newly promoted public

safety employees must serve a minimum probationary period of six months from the date of promotion. The Department heads can extend an employee's probationary period. Department heads may release probationary employees with the approval of the City Administrator.

Department heads may authorize time off up to a period of one day. Department heads schedule vacation leaves with approval of the City Administrator. Department heads approve leave requests. The Department head approves sick leave. Leaves of absence for military service are granted upon proper application through the Department heads to the City Administrator. Funeral leave may be granted by the City Administrator. Department heads, with the approval of the City Administrator, may grant a regular employee a leave of absence without pay not to exceed twenty working days in a fiscal year.

Employee complaints must first be discussed with the employee's immediate supervisor. If no satisfaction is attained, the employee discusses the matter with his or her department head. If satisfaction is still not attained, the employee will notify the City Administrator in writing stating the reasons for his or her complaint. Within ten days, the City Administrator may call a meeting with the complainant, department head, and any other persons involved in the complaint. The decision of the City Administrator shall be final. An employee discharged or reduced in rank or compensation may further appeal to the Personnel Grievance Board, which is made up of Aldermen.

The Department head, with the approval of the City Administrator, may lay off any classified employee. A Department head may rehire a laid off employee with the approval of the City Administrator. An employee may resign by giving his or her Department head fourteen days written notice. A former employee may be rehired at the discretion of the Department head and City Administrator. An employee may be

reprimanded, suspended, demoted, or discharged for cause by a Department head with the approval of the City Administrator or by the City Administrator upon consultation with the Department head. Only the City Administrator may transfer employees between departments.

The City's Emergency Medical Services (EMS) Department provides Advanced Life Support (ALS) ambulance service within its assigned district. To provide ALS ambulance service, the Department is required to have a licensed paramedic on each ambulance call. The EMS Department serves a district encompassing the City of Harrisonville and two other cities. The EMS Department also provides mutual aid to Basic Life Support (BLS) ambulance services whenever they require the services of a paramedic. The EMS Department operates twenty-four hours per day, seven days per week.

Lloyd Rudell is the Director of the EMS Department. The EMS Department has three full-time Shift Supervisors who are licensed paramedics. The EMS Department also has four full-time paramedics and five part-time paramedics. In addition, the EMS Department has approximately twenty-eight part-time Emergency Medical Technicians (EMTs). Lastly, the EMS Department has one Billing Clerk.

The three EMS Shift Supervisors were all experienced paramedics with the EMS Department prior to being appointed as EMS Shift Supervisors. At various times, EMS Shift Supervisor Marty Baumhoff had served as Assistant EMS Director and Acting EMS Director. Mr. Baumhoff was promoted to the position of EMS Shift Supervisor. Prior to becoming a Shift Supervisor, Don Bradshaw had served as Operations Manager for the EMS Department. Don Bradshaw and JoAnne Hawley were selected as Shift Supervisors through an assessment center.

As far as the full-time paramedics, the only promotion possible within the Department is a promotion to Shift Supervisor. However, as long as the three current Shift Supervisors remain with the EMS, the full-time paramedics will not receive promotions.

The EMS Director works nine hours a day Monday through Friday. His hours are 9:00 a.m. to 6:00 p.m. The Department's other full-time employees work shifts of twenty-four hours on and forty-eight hours off. The Department has three shifts A, B, and C. Each shift begins and ends at 8:00 a.m. The Shift Supervisor for Shift A is Marty Baumhoff. The full-time paramedic permanently assigned to Shift A is Eric Myler. The Shift Supervisor for Shift B is Don Bradshaw. The full-time paramedic permanently assigned to Shift B is Trevor Vaharsky. The Shift Supervisor for Shift C is JoAnne Hawley. The full-time paramedic permanently assigned to Shift C is Chad Corder. The fourth full-time paramedic is Joe Vaughn. Once Mr. Vaughn completes his probationary period, he will rotate between shifts to fill in for paramedics who are on vacation or leaves of absence. The EMS Director is the individual who decided to rotate Mr. Vaughn between shifts. The Shift Supervisors have no authority to transfer the full-time paramedics between shifts.

Mr. Vaughn was originally assigned to Shift B, but due to performance issues he was transferred to Shift C. The transfer was designed to give Mr. Vaughn needed help and training. However, the Shift Supervisor was not instructed to do extra monitoring of Mr. Vaughn's performance or provide reports to the EMS Director concerning Mr. Vaughn's performance. The EMS Director also wanted Mr. Vaughn to have a chance to work with all of the Shift Supervisors. The EMS Director will decide whether or not Mr. Vaughn remains employed with the Department.

The EMS Department runs two ambulance crews. Therefore, the Department must have a paramedic and EMT for each ambulance crew. Typically, a Shift Supervisor, a full-time paramedic and two part-time EMTs will be on duty during a shift. The Shift Supervisor and an EMT comprise one ambulance crew and the Paramedic and the second EMT comprise the other ambulance crew. The two ambulance crews will rotate calls so that the Shift Supervisor and paramedic each run half the calls.

On an ambulance call, the Shift Supervisor or paramedic is the lead medical person and is in charge at the scene. On scene, ambulance crews follow set patient care procedures that are referred to as protocols. The current protocols were drafted by one of the part-time paramedics and were approved by the EMS Director.

The EMS Director holds two weekly staff meetings. The first meeting is with the Shift Supervisors. The second meeting is with the full-time paramedics and part-time personnel. The meeting with the Shift Supervisors is held each Wednesday at 8:00 a.m. These meetings with the Shift Supervisors last approximately an hour.

In the staff meetings, the EMS Director and Shift Supervisors discuss such organizational issues such as staffing needs, policy changes, budget issues, length of lunch periods, proper completion of paperwork, and the proper handling of information from dispatchers. They also discuss some personnel issues, but they generally do not discuss disciplinary matters. These meetings are generally informational in nature and there is no decision-making on the part of the Shift Supervisors. The EMS Director considers the meetings with the Shift Supervisors to be confidential in nature.

The EMS employees have daily duties or “daily checks” which must be completed each day, including Saturday and Sunday. These daily duties are normally performed between 6:00 a.m. and 8:00 a.m. All EMS employees, including Shift Supervisors, perform these daily duties. These daily duties include such tasks as

cleaning the ambulances, cleaning the station, and performing mechanical checks on the ambulances (such as changing the batteries and checking the oil). They must also inventory and stock the ambulances with medical supplies. At times, the EMS Director will also assign extra duties such as cleaning out the supply room. The Shift Supervisors work with the other EMS employees to complete these extra duties.

The Shift Supervisors are responsible for seeing that the daily duties are performed properly. The Shift Supervisors have no discretion as to whether or not the daily duties are performed. If the daily duties are not performed properly, the EMS Director will inform the Shift Supervisor.

The EMS Director has assigned to each Shift Supervisor and full-time paramedic special areas of responsibility. The EMS Director works directly with each individual with regard to his or her special areas of responsibility. Working directly with each individual allows for more accurate and timely flow of information concerning each area.

Shift Supervisor Jo Anne Hawley is the Education Training Officer. She is also responsible for uniforms and ordering supplies. Shift Supervisor Don Bradshaw is the Medical Supply Manager and the Quality Assurance Coordinator. Shift Supervisor Marty Baumhoff is the Fleet Manager. Paramedic Joe Vaughn is the Equipment Manager. Paramedic Trevor Vaharsky is in charge of radios. Paramedic Chad Corder is the Infection Control Officer. As such, he is responsible for biohazard and vaccinations. Paramedic Eric Myler is the Safety Coordinator. He is also responsible for mapping. Mr. Myler's mapping duties include assembling the map books and creating a map test.

The duties of Scheduling Officer rotate among the three Shift Supervisors. As Scheduling Officer, the Shift Supervisors take turns scheduling the part-time paramedics and EMTs. The part-time paramedics and EMTs sign up for six or twelve hour shifts. Each part-time paramedic and EMT desiring to sign up for shifts completes a schedule

indicating which shifts the paramedic or EMT wishes to work. The part-time paramedics and EMTs turn these schedules in to one of the Shift Supervisors. The schedules are locked in a cabinet. The Shift Supervisor that works the Tuesday shift takes the schedules turned in by the part-time paramedics and EMTs and completes a shift schedule.

The EMS Department is housed in an addition to the Fire Station. The addition was designed with separate sleeping quarters for male and female employees. There are also separate sleeping quarters for the Shift Supervisors. The Shift Supervisors also share an office. The office contains three desks and three file cabinets, one for each Shift Supervisor. Since each Shift Supervisor is on a different shift, only one Shift Supervisor will be using the office at any given time. Also within the EMS facility is a report writing room. The report writing room contains two desks and a computer to be used by the paramedics for completing their paperwork.

All EMS Department personnel wear the same uniform. However, the Department anticipates that in the future they will have different uniforms for different ranks.

Both the Shift Supervisors and paramedics have paperwork that must be completed during the shifts. Each paramedic, including each Shift Supervisor, must complete a run report for each ambulance run he or she makes. At the end of each shift, each Shift Supervisor must complete a shift report which is submitted to the EMS Director. Additionally, each Shift Supervisor and full-time paramedic must complete paperwork with regard to his or her assigned areas of special responsibility. The Shift Supervisors spend from two to four hours per shift on non-call related paperwork and the Paramedics spend one to three hours per shift on non-call related paperwork.

Prior to September 10, 2001, leave requests were submitted directly to the EMS Director for approval. After September 10, 2001, the Shift Supervisors began signing the leave requests for the full-time paramedics and part-time paramedics and EMTs. This change appears to have been precipitated by the Union's organizing effort. By letter dated August 13, 2001, the Union requested that the City voluntarily recognize it as the exclusive bargaining representative for the full-time personnel of the City's Fire and EMS Departments. The City Administrator shared this information with the EMS Director and the Fire Chief. The City declined to voluntarily recognize the Union. On August 17, 2001, the Union filed a representation petition with this Board. The City Administrator had discussions with the EMS Director and Fire Chief concerning the Union's representation petition. On September 5, 2001, the EMS Director sent an e-mail to the three Shift Supervisors informing them that they were to assume greater rolls as managers. In the e-mail, the EMS Director also informed the Shift Supervisors that, beginning September 10, 2001, they would approve the full-time paramedic's leave requests and approve and sign the full-time paramedics timesheets. This directive from the EMS Director is inconsistent with the City's personnel policy requiring the Department Heads to approve leave requests.

Since September 10, 2001, the Shift Supervisors sign leave requests on the Supervisors' signature line. The leave requests are then submitted to the EMS Director for his signature and approval. The EMS Director still has the ultimate authority to approve or disapprove leave request and has questioned at least one of the Shift Supervisors with regard to his signing of a leave request. However, if an individual is going to be on leave, it is the Shift Supervisor's responsibility to see that the individual's position is filled.

The Shift Supervisor also takes turns serving as time manager. The Shift Supervisor serving as time manager signs the other employees' timesheets. The timesheets must be submitted to the EMS Director no later than 8:00 a.m. each Monday.

Prior to the hearing date, the Shift Supervisors had not conducted any employee evaluations for EMS Department employees. However, the City anticipates that in the future the Shift Supervisor's will conduct employee evaluations.

The Shift Supervisors have not had any formal supervisor training. However, the Shift Supervisors have attended training regarding the Employee Assistance Program. They have also attended training concerning drug and alcohol abuse. This latter training was designed to help the Shift Supervisors identify the signs of drug and alcohol abuse.

With regard to the employee behavior problems, the Shift Supervisors speak to the employee or employees in question and then submit a written report to the EMS Director concerning the incident. The EMS Director asked the Shift Supervisors to keep him advised of employee behavior problems. The EMS Director also told the Shift Supervisors to keep a file on each employee. When a Shift Supervisor has to speak to an employee about a behavior problem, the Shift Supervisor is to place a "coaching letter" in the employee's file. On one occasion, the EMS Director asked Shift Supervisor JoAnne Hawley to speak to an employee concerning his misuse of the computer. She spoke with the employee and submitted a report to the EMS Director. On another occasion, Shift Supervisor Marty Baumhoff spoke to three employees concerning horseplay at the EMS facility. Mr. Baumhoff noted the incident in his shift report. The EMS Director disagreed with Mr. Baumhoff's handling of the incident, but took no action

concerning the incident. Lastly, the Shift Supervisors do not have the authority to issue a written reprimand to an employee, suspend an employee, or discharge an employee.

With regard to the department budget process, each Shift Supervisor and full-time paramedic submits budget recommendations to the EMS Director with regard to their respective assigned areas of responsibility. The EMS Director may make changes to these recommendations. The EMS Director then submits the budget recommendations through the normal City budget process.

With regard to expenditures, the Shift Supervisors have the same expenditure authority as the EMS Director. The Shift Supervisors can spend up to \$1,000 without obtaining approval.

The Shift Supervisors interviewed the three full-time paramedics that were hired in September 2001. The Department had three paramedic vacancies. The City received job applications from more than three individuals seeking appointment to one of the paramedic positions. Three individuals were selected to interview for the three vacant paramedic positions. The EMS Director instructed the Shift Supervisors to interview the three candidates and to rank the three candidates. The EMS Director provided the Shift Supervisors with a list of questions to ask the candidates. The EMS Director also supplied the Shift Supervisors with a list of questions that the candidates should not be asked. During the interviews, the Shift Supervisors asked questions from the list of permissible questions. The Shift Supervisors ranked each candidate and submitted the rankings to the EMS Director. Shift Supervisor Marty Baumhoff thought one of the candidates should not be hired. However, all three candidates were hired.

Anytime there is an on-the-job injury, the City's insurance company requires that an employee "MARCIT" incident report and a supervisor "MARCIT" incident report be

filled out and submitted to the company within twenty-four hours of the injury. The MARCIT incident reports require the reporting of facts.

The injured employee completes the employee's MARCIT incident report. The employee is to set forth in the incident report a detailed description of how the incident occurred, the cause of the incident or injury, and the employee's opinion as to actions that should be taken to prevent similar reoccurrences.

The Supervisor's MARCIT incident report is to be completed by the "appropriate supervisor." In the EMS Department a Shift Supervisor completes the supervisor's incident report. The supervisor's incident report requires much of the same information as the employee's incident report. The supervisor is to set forth in the incident report a detailed description of how the incident occurred, the cause of the incident or injury, and the actions that have been taken or will be taken should be taken to prevent similar reoccurrences. The supervisor also is to include a description of the injury and any medical treatment received by the injured employee.

The MARCIT incident report also contains space for the Department head's comments and signature. The original report is forwarded to the City's Human Resources Department. The City Clerk is the City's MARCIT Coordinator. The City Clerk also signs the MARCIT incident report.

The EMS Director is the only salaried employee in the Department. The EMS Director is not eligible for overtime pay. The Shift Supervisors and full-time paramedics are paid by the hour. The Shift Supervisors and paramedics earn time and a half for overtime. At entry level, the Shift Supervisors earn approximately six percent more than the paramedics. Their respective hourly rates of pay are \$10.44 and \$9.86. At the top of the pay scale, the Shift Supervisors can earn approximately seven percent more than the paramedics. Their respective hourly rates of pay are \$12.82 and \$11.92.

Prior to November 1996, the City's Fire Department was an all-volunteer fire department. However, the City had difficulty finding volunteer firefighters that could respond to fires during the daytime Monday through Friday. Therefore, in November 1996, the City hired full-time employees to man the fire station during those hours.

The Fire Department has five full-time employees, the Fire Chief, one Captain, and three Firefighters. The Fire Chief is Joe Gerke. The full-time Captain is Nathan Carpenter. The three full-time Firefighters are Scott Mathes, Johnny Coday, and Lane Hammonds.

Joe Gerke was hired as the full-time Fire Chief during January 2000. Nathan Carpenter was hired by the City as the full-time Captain on November 1, 1996. The three full-time Firefighters were hired sometime between November 2, 1996 and November 30, 1996. The three full-time Firefighters were hired through the use of an assessment center. The assessment center was comprised of multiple evaluation panels. Captain Carpenter sat on one of the evaluation panels.

For the full-time Firefighters, the only promotion possible in the Fire Department is to Captain. However, as long as Captain Carpenter is with the Fire Department, the Firefighters will not receive a promotion.

All of the full-time Fire Department employees are trained Emergency Medical Technicians. Captain Nathan Carpenter is also State certified as a Firefighter One, an Instructor One, and a Fire Investigator. Captain Carpenter also recently completed a Fire Officer One training course offered by the University of Missouri. The Fire Officer One training course is designed to assist firefighters in becoming Fire Officers. The majority of the individuals attending the Fire Officer One training course were firefighters. Captain Carpenter has also attended Employee Assistance Program training.

The Fire Chief would like the three full-time Firefighters to be trained at the same level as Captain Carpenter. Currently, the three full-time Firefighters (Scott Mathes, Johnny Coday, and Lane Hammonds) are State certified as Firefighter Ones and as Fire Investigators. Lane Hammonds is also State certified as an Instructor. Scott Mathes and Johnny Coday are to become State certified as Instructors. The Fire Chief has also discussed with Captain Carpenter the possibility of having the three full-time Firefighters take the Fire Officer One training course.

In addition to the full-time employees, the Fire Department has a number of volunteer personnel including one Captain, two Lieutenants, and an undisclosed number of Firefighters. The volunteer Captain is Duane Gerke. The two volunteer Lieutenants are Jamie Taylor and Jason Honderick. All Fire Department personnel, full-time and volunteer, report directly to the Fire Chief.

All of the Fire Department's full-time employees work the same schedule or shift. On Monday, Wednesday, Thursday, and Friday, the full-time employees work from 8:00 a.m. to 4:30 p.m. On Tuesday, the full-time employees work from 1:30 p.m. to 10:00 p.m. The remaining time the fire station is unmanned.

The minimum number of individuals required on a fire truck is three. If the Fire Department is short staffed (fewer than three full-time employees are on duty), volunteer personnel are called to the station to fill the vacancies. It is Captain Carpenter's responsibility to find volunteer personnel willing to fill the vacancies.

Under the direction and control of the Fire Chief, Captain Carpenter schedules and assigns tasks to the Firefighters. Captain Carpenter and the full-time Firefighters have daily station duties that must be performed. The Fire Chief has set minimum expectations with regard to such items as cleaning the fire trucks, cleaning the station, and completing other assigned tasks. Captain Carpenter prepared a list of the daily

station duties. Captain Carpenter coordinates the performance of these daily station duties and he is responsible for seeing that they are completed properly. Each morning, Captain Carpenter leads a daily meeting or briefing. The Fire Chief frequently attends these morning meetings. During the morning meeting, the day's activities are planned and pertinent issues are discussed. Captain Carpenter assigns tasks to the Firefighters from the list of daily station duties and, at times, the Chief will assign special tasks to the Captain and Firefighters. Captain Carpenter works alongside the Firefighters to complete the daily station duties. If the station duties are not completed properly, the Fire Chief speaks to Captain Carpenter. Captain Carpenter then sees to it that the station duties are completed correctly. Captain Carpenter is primarily concerned with making sure that the daily station duties are completed properly.

During their shift, the full-time Fire Department employees respond to fire calls. The Fire Chief is usually present at all fire calls and serves as incident commander. If the Chief is in charge of the scene, Captain Carpenter is in charge of engine company operations. Captain Carpenter coordinates the engine company's activities to carry out the tasks assigned by the Fire Chief. Captain Carpenter works alongside the Firefighters to extinguish the fire.

In fighting a fire, the engine company follows standard operating procedures (SOPS). The Fire Chief wrote the SOPS. The Chief then discussed the SOPS with all of the Fire Department Officers. Following those discussions, all Fire Department personnel critiqued the SOPS.

On small fires (such as trashcan fires and small grass fires), the Fire Chief may not be present or the Fire Chief may chose not to take command of the incident. On those occasions, Captain Carpenter will serve as the incident commander. As incident Commander, Captain Carpenter can call for volunteer personnel or request mutual aid

from a neighboring Fire Department. Captain Carpenter could also request assistance from state or federal agencies. In the past, Captain Carpenter has requested assistance from the State Fire Marshall. On another occasion, Captain Carpenter requested assistance from the Missouri Department of Natural Resources regarding a gasoline spill.

During times when no full-time Fire Department personnel are on duty, volunteer Fire Department personnel respond to fire calls. Volunteer personnel have radio-controlled pagers and are “toned out” by a twenty-four hour police dispatcher. The volunteer personnel respond to the fire station to retrieve the appropriate fire apparatus and then proceed to the fire scene. The most senior Fire Department employee (volunteer or full-time) on the fire scene takes charge and serves as incident commander. If no Fire Department Officer responds to the fire call, the most senior Firefighter on the scene takes charge and serves as incident commander. A volunteer Firefighter will, at times, serve as incident commander. As incident Commander, the volunteer Firefighter can call for additional Fire Department personnel or request mutual aid from a neighboring Fire Department. The volunteer Firefighter can also request assistance from state and federal agencies.

The Fire Department also responds with the EMS Ambulances on all medical calls, except calls at hospitals, within the City limits. At a medical emergency scene, the EMS paramedic is in charge. The fire engine company assists the ambulance crew with preparing the patients for transport to the hospital.

Whenever the Fire Chief is gone, Captain Carpenter fills in for the Chief. However, the periods of time that the Fire Chief is truly unavailable are infrequent and short in duration. In three years time, Captain Carpenter has never attended one of the City Administrator's weekly management team meetings in place of the Fire Chief.

When the Chief is absent, Captain Carpenter can request resources such as mutual aid and Captain Carpenter can sign purchase orders. Whenever Captain Carpenter is gone, Firefighter Scott Mathes fills in as Acting Captain. Other Firefighters have also served as Acting Captain in Captain Carpenter's absence.

The Fire Chief has assigned special areas of responsibility to Captain Carpenter and the three full-time Firefighters. Captain Carpenter is responsible for entering incident reports into the Fire Department's computer system and keeping statistical data. Captain Carpenter is also responsible for handling relations between Fire Department personnel and members of the general public. Firefighter Scott Mathes coordinates in-house training. Firefighter Mathes is also responsible for scheduling and conducting fire prevention classes and public relations events. He is also responsible for conducting fire inspections. Lastly, Firefighter Mathes is responsible for filing paperwork in Fire Department employees' training files and personnel files. Firefighter Johnny Coday is responsible for fire apparatus maintenance and Firefighter Lane Hammond is responsible for station and grounds maintenance. Firefighter Hammond is also responsible for conducting hose tests.

Captain Carpenter has very little input in formulating Fire Department policies. At staff meetings, the Fire Chief distributes new Department policies to Captain Carpenter and the three volunteer Fire Officers. The Fire Chief and Fire Officers discuss the new policies. Comments by the Fire Officers may lead to minor changes, such as spelling corrections, in the new policy. However, the Fire Officers comments do not lead to substantial substantive changes in new policies.

Captain Carpenter and the Firefighters wear the same station uniform. However, the Captain's dress uniform is distinguishable from the Firefighters' dress uniforms in that the Captain wears a light blue shirt. Additionally, the Captain's fire helmet is red so

that he may be distinguished from the Firefighters at fire scenes. Lastly, at the fire station, the Captain has an office with his name on the door.

Captain Carpenter has no authority to discipline Fire Department employees. In handling human resource issues within the Fire Department, Captain Carpenter must follow City and Departmental rules and regulations. If a Firefighter fails to perform his job duties properly, Captain Carpenter will attempt to correct the behavior by speaking to the employee. However, Captain Carpenter has never disciplined an employee. Further, Captain Carpenter does not have the authority to issue a written reprimand to an employee, suspend an employee, or terminate an employee. Once, Captain Carpenter wrote a memorandum to the Fire Chief concerning a personnel problem, but the Chief took no action.

After the events of September 11, 2001, United States flags were placed on the rearview mirrors of the fire apparatus. However, the flags obstructed the rearview mirrors. The Fire Chief told Captain Carpenter to reposition the flags. Captain Carpenter repositioned the flags on the fire truck. Some of the Fire Department personnel took offense at Captain Carpenter's repositioning of the flags. The Fire Chief offered to intervene in the matter, but Captain Carpenter told the Chief that he could handle the situation.

Captain Carpenter signs, as supervisor, the leave requests for the three full-time Firefighters. As the Department head, the Fire Chief must also sign the leave requests. The Fire Chief approves or disapproves the leave requests. With regard to Captain Carpenter and the three full-time Firefighters, vacation is approved on a first-come, first-serve basis. Due to minimum manning requirements, only one of these individuals can be absent at a time. There is an understanding within the Department that as long as the Captain or one of the other full-time Firefighters is not on leave, a Firefighter can

take leave whenever he requests it. However, Captain Carpenter usually clears leave requests with the Fire Chief prior to signing them. The Fire Chief has questioned Captain Carpenter's signing of leave requests. Additionally, Captain Carpenter can only make recommendations to the Fire Chief with regard to requests for unpaid leaves of absences. Captain Carpenter has no authority to grant requests for leave without pay.

Captain Carpenter signs the full-time Firefighters' weekly timesheets. The Fire Chief also signs the timesheets. Captain Carpenter signs his own timesheet twice. In accordance with the Fire Chief's instructions, Captain Carpenter signs both as the employee and as the supervisor. The Fire Chief also instructed Captain Carpenter to maintain his (the Chief's) timesheet. If there is a discrepancy on a timesheet, the employee corrects his timesheet and Captain Carpenter signs the corrected timesheet.

When it is time for employee evaluations, the City's Human Resources Department completes the top portion of the employee evaluation forms and forwards them to the Fire Chief. On the top of the employee evaluation forms, Fire Chief Joe Gerke is shown as the Supervisor. Prior to the year 2001, the Fire Chief completed the employee evaluation forms. Captain Carpenter reviewed the evaluation forms and signed the evaluation forms as the supervisor. The Fire Chief signed the evaluation forms as the Department head. Once the evaluation forms were completed, the Fire Chief and Captain Carpenter would meet with each employee and review the employee's performance evaluation.

In 2001, the Fire Chief instructed Captain Carpenter to complete the employee evaluation forms. Prior to the hearing date, Captain Carpenter had completed the employee evaluation form for Firefighter Scott Mathes. Captain Carpenter had given the evaluation form to the Fire Chief. As of the date of the hearing, Captain Carpenter had not received any response from the Fire Chief concerning Firefighter Mathes' employee

evaluation. Furthermore, as of the date of the hearing, the evaluation had not been presented to Firefighter Scott Mathes. When the evaluation is presented to Firefighter Mathes, the Fire Chief and Captain Carpenter will meet with Mr. Mathes to review the performance evaluation.

If there is a difference of opinion between the Fire Chief and Captain Carpenter as to the performance rating to be given to an employee, Captain Carpenter defers to the Fire Chief. In the past, the Fire Chief has disagreed with Captain Carpenter's evaluation of employees. One year, Captain Carpenter wanted to give Firefighter Scott Mathes a performance rating of outstanding. However, the Fire Chief disagreed and refused to give Firefighter Scott Mathes a rating of outstanding.

The Fire Chief is the only salaried employee in the Fire Department. Captain Carpenter and the three full-time Firefighters are paid by the hour. Captain Carpenter is paid approximately seventeen dollars per hour. The three full-time Firefighters are paid approximately sixteen dollars per hour. Captain Carpenter and the three full-time Firefighters are eligible to receive overtime pay. The Fire Chief is not eligible for overtime pay. Lastly, when the Fire Chief is absent, Captain Carpenter does not receive out-of-class pay.

As noted previously, anytime there is an on-the-job injury, the City's insurance company requires that an employee "MARCIT" incident report and a supervisor "MARCIT" incident report be filled out and submitted to the company within twenty-four hours of the injury. The injured employee completes the employee's incident report. The employee is to set forth in the incident report a detailed description of how the incident occurred, the cause of the incident or injury, and the employee's opinion as to actions that should be taken to prevent similar reoccurrences.

The Supervisor's incident report is to be completed by the "appropriate supervisor." In the Fire Department, the supervisor's incident report is to be completed by the individual in charge of the engine company (the Company Officer) at the time the injury occurred. At various times, supervisor incident reports have been completed and signed by the Fire Chief, Captain, and Firefighters. The supervisor's incident report requires much of the same information as the employee's incident report. The supervisor is to set forth in the incident report a detailed description of how the incident occurred, the cause of the incident or injury, and the actions that have been taken or will be taken to prevent similar reoccurrences. The supervisor is to also include a description of the injury and any medical treatment received by the injured employee.

The MARCIT incident reports require the reporting of facts. If the injury is minor and the cause obvious, the supervisor reports the facts. If the injury is more serious or the cause is not obvious, the incident is investigated by the Fire Department's Safety Committee. The Safety Committee is comprised of the two Captains and the two Lieutenants.

The Fire Chief receives a copy of each MARCIT incident report. The original reports are forwarded to the City's Human Resources Department. The City Clerk is the City's MARCIT Coordinator. The City Clerk also signs the MARCIT incident reports.

The Fire Chief discusses certain issues with Captain Carpenter that the Chief expects to be kept confidential. These issues include personnel issues, long range planning, budgeting, and development and building plan review. The full-time Firefighters may also be involved with development and building plan review and the Chief expects the Firefighters to also keep this information confidential. Additionally, the Firefighters are expected to keep confidential any other information the Fire Chief shares with them which the Chief specifically requests be held confidential.

The Fire Chief also receives warnings from the City's Police Chief concerning locations of possible illegal activity. The warnings permit the Fire Department to take additional safety precautions if they are called to those locations. The Fire Chief shares these police warnings with Captain Carpenter. This information is to be held confidential so that Police investigations or operations are not compromised.

With regard to the budget, all Fire Department personnel have input into the Department's budget. The Fire Chief and Captain Carpenter discuss the various budget proposals submitted by the employees. The Chief then decides which budget proposals should be included in the Department's budget request and which budget proposals should not be included in the Department's budget request. The Fire Chief expects Captain Carpenter to keep these budget discussions confidential so that employee morale is not adversely affected.

CONCLUSIONS OF LAW

The Union seeks to represent a bargaining unit consisting of all full-time Fire Department employees at or below the rank of Captain and all full-time Emergency Medical Service (EMS) Department employees at or below the rank of Supervisor, excluding supervisors, confidential employees, and any full-time Secretary, Billing Clerk, and Accounts Receivable Clerk.

An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 2000 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

In this case, the City objects to the inclusion of the three EMS Shift Supervisors and the full-time Fire Captain in the bargaining unit on the grounds that they are supervisors and confidential employees. Therefore, the City contends that the EMS

Shift Supervisors and Fire Captain should be excluded from the bargaining unit. We will address these issues below.

Prior to addressing those issues the Board will address the issue of the credibility of the evidence. The Board finds that the Union presented the more persuasive evidence. The testimony of the City's witnesses contained a number of contradictions. For example, two of the City's witnesses testified that the City only used assessment centers when hiring management or supervisory employees. However, the three full-time Firefighters were hired through the use of an assessment center and the City does not maintain that the Firefighters are management or supervisory personnel. Additionally, there were inconsistencies between the stated authority of the EMS Shift Supervisors and Fire Captain and the provisions City's personnel manual. Lastly, and most disturbing, was the introduction into evidence of two different Shift Supervisor job descriptions which were both dated January 30, 2001. Based upon the foregoing, the Board discounted the evidence presented by the City.

We now turn to the issue of whether the EMS Shift Supervisors and the full-time Fire Captain are supervisors. While supervisors are not specially excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See, *Golden Valley Memorial Hospital v. Missouri State Board of Mediation*, 559 S.W.2d 581 (Mo.App. 1977) and *St. Louis Fire Fighters Association, Local 73 v. City of St. Louis*, Case No. 76-013 (SBM 1976). The rationale for this exclusion is that supervisors do not have a community of interest with, and therefore are not appropriately included in a bargaining unit comprised of, the employees they supervise. This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise.

This Board has traditionally used the following indicia to determine supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the workforce;
3. The number of employees supervised and the number of other persons exercising greater, similar and lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
5. Whether the person is primarily supervising an activity or primarily supervising employees; and
6. Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.¹
7. The amount of independent judgment and discretion exercised in the supervision of employees.

Baer v. Civilian Personnel Division, St. Louis Police Officers Association, 747 S.W.2d 159, 164 (Mo. App. W.D. 1988). We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. Moreover, no one factor is determinative. Instead, the inquiry in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.² In making its determination, the Board will consider the job duties currently performed by the employees in question. See, *Kansas City School District v. Kansas City Federation of Teachers, Local 691*, Public Case No. UC 2001-030 at 26-27 (SBM 2001) and cases cited therein.

A review of the factors demonstrates that the EMS Shift Supervisors are not supervisors within the meaning of the Missouri Public Sector Labor Law. The EMS Shift

¹ See, for example, *City of Sikeston*, Case No. R 87-012 (SBM 1987).

² See, for example, *Monroe County Nursing Home District, d/b/a Monroe Manor*, Case No. R 91-016 (SBM 1991).

Supervisors do not have the authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of the other EMS Department employees.

The EMS Shift Supervisors do not have the authority to effectively recommend the hiring of employees. In September 2001, three vacant paramedic positions were filled. Despite the fact that the City received more than three employment applications, the EMS Shift Supervisors were directed to interview three particular candidates. The EMS Director instructed the Shift Supervisors to interview the three candidates and to rank the three candidates. The EMS Director provided the Shift Supervisors with a list of questions to ask the candidates. The Shift Supervisors interviewed and ranked each candidate. Shift Supervisor Marty Baumhoff thought one of the candidates should not be hired. However, all three candidates were hired. Based upon the foregoing, it is apparent that the EMS Shift Supervisors cannot effectively recommend the hiring of individuals.

Furthermore, the EMS Shift Supervisors cannot effectively recommend promotions or transfers. With regard to the full-time paramedics, the only possible promotion within the EMS Department is to Shift Supervisor. However, as long as the current Shift Supervisors remain with the EMS Department, the full-time paramedics will not receive promotions. The Shift Supervisors also do not have the authority to transfer the full-time paramedics from one shift to another. In addition, only the City Administrator has the authority to transfer employees between Departments.

The EMS Shift Supervisors also cannot effectively recommend the discipline or discharge of EMS Department employees. The EMS Director instructed the EMS Shift Supervisors to keep him informed of employee behavior problems. If a problem arises, the Shift Supervisor on duty will speak to the employee or employees involved and submit a written report to the EMS Director. On occasion, the EMS Director has

instructed a Shift Supervisor to speak to an employee concerning a problem. Lastly, the EMS Shift Supervisors have no authority to reprimand, suspend, or terminate an employee. This first factor indicates that the EMS Shift Supervisors are not true supervisors.

The EMS Shift Supervisors have little authority to direct and assign the EMS Department workforce. With regard to the full-time paramedics, Eric Myler is permanently assigned to Shift A, Trevor Vaharsky is permanently assigned to Shift B, and Chad Corder is permanently assigned to Shift C. The fourth full-time paramedic is Joe Vaughn. Once Mr. Vaughn completes his probationary period, he will rotate between shifts to fill in for paramedics who are on vacation or leaves of absence. The EMS Director is the individual who decided to rotate Mr. Vaughn between shifts. The Shift Supervisors have no authority to transfer the full-time paramedics between shifts.

With regard to ambulance service, the EMS Department runs two ambulances. Since the EMS Department provides Advanced Life Support service, at least one paramedic must be on each ambulance crew. Generally, a Shift Supervisor, a full-time paramedic and two part-time EMTs will be on duty during a shift. Therefore, out of necessity, the Shift Supervisor and an EMT comprise one ambulance crew and the Paramedic and the second EMT comprise the second ambulance crew. The two ambulance crews rotate calls so that the Shift Supervisor and paramedic each run half of the calls. On an ambulance call, the Shift Supervisor or paramedic is the lead medical person and is in charge at the scene. On scene, ambulance crews must follow set patient care protocols.

Each EMS Shift Supervisor and full-time paramedic is assigned special areas of responsibility. These areas of responsibility were assigned by the EMS Director and the

EMS Director works directly with the Shift Supervisors and full-time paramedics concerning their respective areas of responsibility.

The EMS employees have daily duties or “daily checks” which must be completed each day. These daily duties are normally performed between 6:00 a.m. and 8:00 a.m. All EMS employees, including Shift Supervisors, perform these daily duties. These daily duties include such tasks as cleaning the ambulances, cleaning the station, and performing mechanical checks on the ambulances. The Shift Supervisors coordinate these daily activities and they are responsible for the proper completion of the daily duties. If the daily duties are not performed properly, the EMS Director will inform the Shift Supervisor.

At times, the EMS Director will also assign extra duties such as cleaning out the supply room. All EMS employees perform these extra duties. Based upon the foregoing, the EMS Shift Supervisors have little authority to direct and assign the EMS Department workforce. This second factor indicates that the EMS Shift Supervisors are not true supervisors.

If the EMS Shift Supervisors were determined to be supervisors, then the EMS Department would have four full-time supervisors to supervise four full-time employees. This would be an unacceptably low number of employees for each supervisor. See, *Central County Emergency 911 v. International Association of Firefighters, Local 2665*, 967 S.W.2d 696, 701 (Mo. App. W.D. 1998). See also, *International Brotherhood of Electrical Worker, Local 53 v. City of Harrisonville*, Public Case No. R 95-034 at 10 (SBM 1996). Additionally, the EMS Shift Supervisors have very little discretion to direct and control the other EMS employees. The EMS Director, City Administrator, and elected officials all have vastly greater authority. Based upon their relatively low positions in the City’s hierarchy, it appears entirely appropriate to place the EMS Shift

Supervisors in the bargaining unit. This third factor indicates that the EMS Shift Supervisors are not supervisors.

The EMS Shift Supervisors appear to be paid more for their experience and job skills than for their supervision of the EMS Department employees. The three EMS Shift Supervisors were all experienced paramedics with the EMS Department prior to being appointed as Shift Supervisors. At various times, Shift Supervisor Marty Baumhoff has served as Assistant EMS Director and Acting EMS Director. Mr. Baumhoff was promoted to the position of EMS Shift Supervisor. Prior to becoming a Shift Supervisor, Don Bradshaw had served as Operations Manager for the EMS Department.

The Shift Supervisors and full-time paramedics are paid by the hour. The Shift Supervisors and paramedics earn time and a half for overtime. At entry level, the Shift Supervisors earn approximately six percent more than the paramedics. Their respective hourly rates of pay are \$10.44 and \$9.86. At the top of the pay scale, the Shift Supervisors can earn approximately seven percent more than the paramedics. Their respective hourly rates of pay are \$12.82 and \$11.92. These pay differentials are quite small for supervisory personnel. This fourth factor indicates that the EMS Shift Supervisors are not true supervisors.

As for the fifth factor, the EMS Shift Supervisors primarily supervise activities, not employees. This point is clearly demonstrated in the case of paramedic Joe Vaughn. Mr. Vaughn was originally assigned to Shift B, but due to performance issues he was transferred to Shift C. However, the Shift Supervisor for Shift C, JoAnne Hawley, is not to do any extra monitoring of Mr. Vaughn's performance or provide reports to the EMS Director concerning Mr. Vaughn's performance.

This point is also illustrated with regard to the daily duties. The Shift Supervisors are responsible to see that the daily duties are completed properly. If the daily duties

are not performed properly, the EMS Director informs the Shift Supervisor. The fifth factor indicates that the EMS Shift Supervisors are not supervisors.

The EMS Shift Supervisors are working supervisors. The EMS Shift Supervisors are licensed paramedics and they respond on approximately fifty percent of the ambulance calls. Furthermore, the EMS Shift Supervisors work alongside the other EMS Department employees to complete the daily duties. The EMS Shift Supervisors also work with EMS Department employees to complete extra duties assigned by the EMS Director. Furthermore, the EMS Shift Supervisors and paramedics have special areas of responsibility that were assigned by the EMS Director. The Shift Supervisors must perform all task related to their assigned areas of special responsibility. Lastly, the Shift Supervisors must complete necessary paperwork such as run reports and shift reports. The sixth factor indicates that the EMS Shift Supervisors are not supervisors.

As for the seventh factor, the EMS Shift Supervisors do not exercise a substantial amount of independent judgment and discretion in the supervision of employees. The daily duties must be completed each day. The EMS Shift Supervisors have no discretion as to whether or not the daily duties are completed. Special tasks assigned by the EMS Director must also be performed. On ambulance calls, the ambulance crew must follow the patient care protocols. The EMS Shift Supervisors must also complete required paperwork such as run reports and shift reports. The EMS Shift Supervisors must also complete all tasks related to the special areas of responsibility assigned to them by the EMS Director. The EMS Shift Supervisors have no authority to hire or terminate an employee. The Shift Supervisors have no real disciplinary authority. Lastly, anytime an on-the-job injury occurs, the Shift Supervisors must complete a MARCIT supervisor incident report. The MARCIT incident reports require the reporting of facts. The information requested on the supervisor's incident

report is substantially similar to the information requested on the employee's incident report. Based upon the foregoing, this factor indicates that the EMS Shift Supervisors are not supervisors.

Overall, the EMS Shift Supervisors do not exercise sufficient supervisory authority in such combination and degree to make them supervisors. They are more analogous to lead workers. Therefore, we conclude that in this case the EMS Shift Supervisors are not supervisors.

Additionally, the full-time Fire Captain is not a supervisor within the meaning of the Public Sector Labor Law. The full-time Fire Captain, Nathan Carpenter, does not have the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of the other Fire Department employees. Captain Carpenter had little input in the hiring of the full-time Firefighters. The Firefighters were hired only days after Captain Carpenter was hired. The Firefighters were hired through an assessment center which had multiple evaluation panels. Captain Carpenter served as a member of one evaluation panel and was only one of many individuals providing input into the decision to hire the Firefighters. Additionally, the Fire Chief, as Department head, actually makes the appointments with the approval of the City Administrator.

Captain Carpenter cannot effectively recommend promotions or transfers. With regard to the full-time positions, the only promotion within the Fire Department is from Firefighter to Captain. As long as Captain Carpenter remains with the Fire Department, there are no promotions available to the Firefighters. Further, the only transfer available to the Firefighters would be a transfer out of the Fire Department and only the City Administrator has the authority to make such a transfer.

Lastly, Captain Carpenter does not have the authority to effectively recommend the discipline or discharge of the other Fire Department employees. Captain Carpenter

has never disciplined or discharged an employee. Once he wrote a memorandum to the Fire Chief concerning a personnel problem, but the Fire Chief took no action. Furthermore, Captain Carpenter has no authority to reprimand, suspend, or terminate an employee. This first factor indicates that the full-time Fire Captain is not a supervisor.

As for the second factor, the full-time Fire Captain does not have the authority to direct and assign the Fire Department workforce. To the extent that Captain Carpenter directs and assigns tasks to the Firefighters, he does so under the direction and control of the Fire Chief. As for station duties, there is a set list of tasks that must be performed each day. These tasks are assigned during the morning meeting, which the Fire Chief frequently attends. At the morning meetings, the Fire Chief will, at times, assign special tasks to the Captain and Firefighters. Furthermore, the Fire Chief is usually present at all fire scenes and serves as incident commander. As incident commander, the Fire Chief assigns tasks to Captain Carpenter and the Firefighters on scene. Lastly, the Fire Chief has assigned to Captain Carpenter and each full-time Firefighter special areas of responsibility such as in-house training, fire apparatus maintenance, and hose testing. The second factor also indicates that the full-time Fire Captain is not a supervisor.

If the full-time Fire Captain were determined to be a supervisor, then the City's Fire Department would have two full-time supervisors to supervise three full-time employees. This would be an inordinately low number of employees for each supervisor. See, *Central County Emergency 911 v. International Association of Firefighters, Local 2665*, 967 S.W.2d at 701. See also, *International Brotherhood of Electrical Worker, Local 53 v. City of Harrisonville*, Public Case No. R 95-034 at 10. Additionally, the Captain Carpenter has very little discretion to direct and control the other employees within the Fire Department. The Fire Chief retains this authority.

Furthermore, the Fire Chief, City Administrator, and elected officials all have vastly greater authority than Captain Carpenter. Given the Captain's place in the City's hierarchy, it appears entirely appropriate to place him in the bargaining unit. This third factor indicates that the full-time Fire Captain is not a supervisor.

The full-time Fire Captain is paid for his skills and not for his supervision of the Fire Department employees. The full-time Fire Captain and Firefighters are paid by the hour and are eligible for overtime. The Captain is paid approximately \$1.00 more per hour than the Firefighters. Additionally, when the Fire Chief is absent and the Captain is filling in for the Chief, the Captain does not receive out-of-class pay. This fourth factor indicates that the full-time Fire Captain is not a supervisor.

With regard to the fifth factor, the full-time Fire Captain primarily supervises activities, not employees. Captain Carpenter coordinates the performance of the daily station duties and he is responsible for seeing that they are completed properly. If the station duties are not completed properly, the Fire Chief speaks to the Captain. At fire scenes, Captain Carpenter usually coordinates the engine company's activities to carry out the tasks assigned by the Fire Chief and to extinguish the fire. The fifth factor indicates that the full-time Fire Captain is not a supervisor.

The full-time Fire Captain is a working supervisor. He performs daily station duties alongside the Firefighters. At fire scenes, Captain Carpenter is usually in charge of engine company operations. As such, the Captain coordinates the engine company's activities and works alongside the Firefighters to extinguish the fire. In addition, the Fire Chief has assigned special areas of responsibility to Captain Carpenter and the full-time Firefighters. As part of his assigned areas of responsibility, Captain Carpenter enters incident reports into the Fire Department's computer system and he ensures statistical

information is kept. This sixth factor indicates that the full-time Fire Captain is not a supervisor.

As for the final factor, the full-time Fire Captain does not exercise a substantial amount of independent judgment and discretion in the supervision of employees. The daily station duties are established and must be completed each day. Additionally, the Fire Chief is frequently present when the daily station duties are assigned. At fire scenes, the Fire Chief is usually present and serves as incident commander. The Fire Chief assigns tasks to the Captain Carpenter and Firefighters and the Captain coordinates the engine company's operations to complete the assigned tasks. The Fire Chief also assigns the special areas of responsibility to Captain Carpenter and the full-time Firefighters. When the flags placed on the fire engine after the events of September 11, 2001, obstructed the rearview mirrors, the Fire Chief told Captain Carpenter to reposition the flags. In accordance with the Fire Chief's directive, the Captain repositioned the flags. Furthermore, Captain Carpenter has no real disciplinary authority. As for employee evaluations, if the Fire Chief and Captain Carpenter disagree as to the rating to be given an employee, the Captain must defer to the Fire Chief. Lastly, the MARCIT incident reports require the reporting of facts. The information requested on the supervisor's incident report is substantially similar to the information requested on the employee's incident report. If the cause of the injury or incident is not apparent, the Fire Department's safety committee investigates the matter. At various times supervisor incident reports, have been completed by the Fire Chief, the Captain and Firefighters. This seventh factor indicates that the full-time Fire Captain is not a supervisor.

Finally, although the full-time Fire Captain, at various times, fills in for the Fire Chief, this occurs sporadically and for short intervals. This temporary authority to fill in

for the Fire Chief is not sufficient to give the Fire Captain supervisory status. See, *Kansas City School District v. Kansas City Federation of Teachers, Local 691*, Public Case No. UC 2001-030 at 29-30, and cases cited therein.

The full-time Fire Captain does not exercise sufficient supervisory authority in such combination and degree to make him a supervisor. He is more analogous to a lead worker. We, therefore, conclude that in this case the full-time Fire Captain is not a supervisor.

Furthermore, the EMS Shift Supervisors and the full-time Fire Captain are not confidential employees within the meaning of the Missouri Public Sector Labor Law. Although confidential employees are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. *Belton NEA/Education Support Personnel v. Belton 124 School District*, Case No. R 94-002 (SBM 1994). The confidential exclusion protects an employer's right to conduct its labor relations through employees whose interests are aligned with those of management, rather than risk having confidential information handled by people with conflicting loyalties who may be subjected to pressure from fellow bargaining unit members. *Id.* This exclusion means that confidential employees cannot be included in any bargaining unit. *Id.*

To decide whether a particular employee is a confidential employee, the Board applies the labor nexus test. *Belton NEA/Education Support Personnel v. Belton 124 School District*, Case No. R 94-002 (SBM 1994). Under that legal standard, employees who act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations are considered confidential employees. *Id.*

Under the NLRB's labor nexus test it is not sufficient to show that an employee has responsibility for protecting the confidences of

management, or has access to confidential information. The test applies only to employees having access to advance information about management's strategy and tactics in labor matters which might be used to the detriment of management.

Parkway School District v. Parkway Association of Education, Support Personnel, PA-ESP, Local 902/MNEA, 807 S.W.2d 63, 67 (Mo. banc 1991).

"The essential issue is whether the challenged employees have such a close relation to the district's management of labor relations that the [City] would be prejudiced by their inclusion in a bargaining unit with other employees." *Id.* at 68. The Board, with its specialized knowledge of employer-employee relations and "the dynamics of collective bargaining in the public sector," makes the determination of whether the employer may be prejudiced. *Id.*

In order to ascertain whether a person is a confidential employee, two determinations must be made under the labor nexus test. *Parkway Association Education Support Personnel, Local 902/MNEA v. Parkway School District*, Public Case No. R 88-025 at 16-17 (SBM 1989). First, the person for whom the employee works must initially be found to formulate, determine and effectuate labor relations policy. *Id.* Secondly, should the first test be met, the inquiry shifts to an examination of the duties of the disputed employees. *Id.* To be excluded, the EMS Shift Supervisors and full-time Fire Captain must assist and act in a confidential capacity to a person who formulates, determines and effectuates labor relation policy. *Id.*

Applying the test in the case of the EMS Shift Supervisors, the first prong of the test is not met. The EMS Shift Supervisors work for the EMS Director, Lloyd Rudell. There was no evidence presented to show that Mr. Rudell in any way formulates, determines or effectuates labor-relations policy for the City. To the contrary, the evidence clearly shows that the Board of Aldermen set policy for the City. Additionally, there was no evidence presented showing that Mr. Rudell serves or will serve on the

City's labor-relations negotiation team. *See, Kansas City School District v. Kansas City Federation of Teachers, Local 691*, Public Case UC 2001-030 (SBM 2001). There was also no evidence presented that Mr. Rudell will assist with the drafting of the City's labor-relations negotiation proposals. *Id.* In the absence of such evidence, the Board cannot find that the City would be prejudiced in its management of labor relations by the inclusion of the EMS Shift Supervisors in the bargaining unit with the other EMS Department employees. *See, Parkway School District v. Parkway Association of Education, Support Personnel, PA-ESP, Local 902/MNEA*, 807 S.W.2d at 68. *See also, International Union of Operating Engineers, Local 2 v. Jefferson County Fleet SVS Division*, Public Case No. R 2000-035 (SBM 2000). Therefore, the first prong of the labor nexus test is not met.

Since the first prong of the labor nexus test was not met, it is unnecessary to examine the second prong of the test. Therefore, the Board holds that the EMS Shift Supervisors are not confidential employees within the meaning of the Missouri Public Sector Labor Law and the EMS Shift Supervisors should be included in the bargaining unit.

We now turn to the question of whether the full-time Fire Captain is a confidential employee. As for the first prong of the labor nexus test, the Fire Captain works for the Fire Chief Joe Gerke. As in the case of the EMS Director, there was no evidence presented to show that Mr. Gerke in any way formulates, determines or effectuates labor-relations policy for the City. The City's Board of Aldermen performs that duty. There was also no evidence presented showing that Mr. Gerke serves or will serve on the City's labor-relations negotiation team or that Mr. Gerke will assist in drafting of the City's labor-relations negotiation proposals. *See, Kansas City School District v. Kansas City Federation of Teachers, Local 691*, Public Case UC 2001-030. In the absence of

such evidence, the Board cannot find that the City would be prejudiced in its management of labor relations by the inclusion of the full-time Fire Captain in the bargaining unit. *Id.* Therefore, the first prong of the labor nexus test is not met.

Since the first prong of the labor nexus test was not met, it is unnecessary to examine the second prong of the test. Therefore, the Board holds that the full-time Fire Captain is not a confidential employee within the meaning of the Missouri Public Sector Labor Law and the full-time Fire Captain should be included in the bargaining unit.

ORDER

The State Board of Mediation finds as follows:

(1) That a bargaining unit consisting of all full-time Fire Department employees at or below the rank of Captain and all full-time Emergency Medical Service (EMS) Department employees at or below the rank of Shift Supervisor, excluding supervisors, confidential employees, and any full-time Secretary, Billing Clerk, and Accounts Receivable Clerk is an appropriate unit.

(2) That the full-time Fire Captain and full-time EMS Shift Supervisors are not supervisors within the meaning of the Missouri Public Sector Labor Law.

(3) That the full-time Fire Captain and full-time EMS Shift Supervisors are not confidential employees within the meaning of the Missouri Public Sector Labor Law.

(4) That the full-time Fire Captain and full-time EMS Shift Supervisors are included in the bargaining unit.

(5) An election is ordered in the bargaining unit set forth in this order.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the

date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have the International Association of Fire Fighters, Local 3133 as their exclusive bargaining representative.

The City shall submit to the Chairman of the State Board of Mediation, within fourteen calendar days from the date of this decision, an alphabetical list of names, job classifications, and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 11th day of April, 2002.

STATE BOARD OF MEDIATION

/s/ John A. Birch
John A. Birch, Chairman

(SEAL)

/s/ LeRoy Kraemer
LeRoy Kraemer, Employee Member

/s/ Robert Douglass
Robert Douglass, Employer Member